

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 104

The question is whether or not the retention of a real estate broker's license by the chief of a division of a department of the City whose employees have access to City information regarding real estate for tax purposes violates any of the standards of conduct found in the Revised Charter of the City and County of Honolulu 1973 (1979 Supp.) [RCH] and the Revised Ordinances of Honolulu 1978 [ROH].

Based on the employee's present duties as head of a division, there are no violations of any standards of conduct.

Following are the facts the Ethics Commission [Commission] has obtained based on the subject employee's testimony, as well as others:

1. The employee, who is a civil service employee, has been serving with the department for over ten years.
2. His department has data for tax purposes on each parcel of real property situated in the City and County of Honolulu.
3. Such data, except data utilized solely by City real property tax appraisers, are public records because they can be found in the field books of the Real Property Tax Division of the Department of Finance.
4. The data that is not public record is kept in a separate data bank, and only personnel that have been assigned security codes may retrieve the information on real property for tax purposes. The employee's supervisor testified that the subject employee will not be able to retrieve the confidential information from the data bank because he hasn't been assigned a security code. The confidential information consists of indices or bench marked real property valuations relative to real property assigned to the same use. The reference to security codes has been confirmed by the head of the department.
5. The employee cannot retrieve any City information on real property tax matters because he has no terminals for his use. However, if he desires to retrieve such information from the data bank, he is required to log such retrieval, including his name and time of retrieval. This log is reviewed by the supervisor in control of the data bank. On the other hand, the real property

information in the data bank need not be retrieved, because the same information is furnished by the realtors' association for use by real estate brokers. This source is more helpful than retrieving information on certain real property from the City data bank because it is a compilation and analysis of real property valuations developed out of information found in the real property field books.

6. Any City information of the proposed foreclosure of real property prior to public notice of such sale may be advantageous to a realtor for resale. That is, if a realtor has such information he can make an arrangement with the delinquent real property tax owner for the payment of delinquent taxes to the City, and obtain the property at below market price because of pending foreclosure by the City. Such proposed foreclosure is made by the head of the Treasury Division (Collections) of the Department of Finance with approval of its director. The employee's department is not involved in the determination of which real property will be sold for delinquent taxes. It merely provides services to keep an account of the payments made on specific real property.

7. The employee testified that he did not solicit sales of real property among his subordinates or fellow employees, nor does he have any real estate salesmen associated with him in the sale of real property through his license.

The primary issue under the foregoing facts is whether the employee is engaged in an activity which is incompatible with his official duties. If so, the retention of his license would result in a violation of Section 11-102.3, RCH.

Section 11-102.3, RCH, provides that no officer or employee shall:

Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

Another provision which may be applicable is Section 11-102.2, RCH, which provides that no officer or employee shall:

Disclose confidential information gained by reason of his office or position or use such information for the personal gain or benefit of anyone.

On application of the foregoing standards of conduct on the facts mentioned hereinbefore, the Commission is of the opinion that retention of the employee's license will not violate the cited provisions. His official duties as head of a division of a department whose employees have access to real estate information do not require any official action by him regarding such information. Although he may exercise his duties to make random review of real property information, he is required to make an appropriate entry in the log of such

activity. This log is examined from time to time by the division head or other supervisors to determine the types of information which are being retrieved.

This access may appear to give the employee an advantage over other realtors, and it may result in his use of City time, equipment, and personnel for his personal gain. However, such access is not helpful to his activities as a realtor. Such data requires compilation and analysis by someone knowledgeable about real property for marketing purposes. Moreover, the realtors' association issues a publication with such information. Thus, there is no necessity for him to retrieve any data on real property from the City's data bank.

The employee's department provides a record of payment of real property taxes by each real property owner. Such information may be advantageous to him as a realtor because such information is the basis for a foreclosure action by the City due to nonpayment of real property taxes. That is, if he had prior knowledge before the public notice of the foreclosure sale of the delinquent property, he could make a deal with the delinquent real property owner to pay the delinquent taxes and obtain the property at below market price because of the pending foreclosure by the City.

The retrieval of such records and analyses is made by employees who are authorized to retrieve such information. Even if the employee had access to such information, he would find no advantage in retrieving such information because he would need time to compile the payment records and make the effort to determine whether or not there had been a sufficient amount of non payment of taxes to warrant foreclosure by the City. Also, he is aware of the fact that such unauthorized retrieval by him would eventually be discovered. The Commission believes he does not wish to jeopardize his tenure and many years of service with the City. Therefore, it is reasonable to conclude that he will not utilize such information for his personal gain.

There is confidential information in the computer regarding real property valuations developed by the appraisers. This confidential information consists of indices or bench marked valuations of property used to establish compiled valuations for real property based on use classifications. This information is kept in a separate data storage unit. Access to this unit is only through security codes assigned by the appropriate person. The employee has not been assigned any security code for this information. Such information is not available to him.

The employee testified that he does not solicit among his subordinates or other employees in his department and that he has no salesmen in his employ. Such statements negate or minimize the use of City time, equipment or personnel for personal gain. In summation, the Commission concludes that retention of the employee's license would not violate Section 11-102.3, RCH, relating to incompatibility and Section 11-102.2, RCH, relating to confidential information.

The following situation negates or minimizes the violation of Section 11-102.3, RCH:

1. The employee's present official duties do not give him the opportunity to take official action in connection with the data in the computer relative to real property;
2. So long as he does not solicit real estate sales among his subordinates or other employees of his department, no allegation or charge can be made that he is using City time, equipment or personnel for personal gain;
3. He is not privy to any foreclosure information of real property for nonpayment of real property taxes because such information is retrieved by a division other than the one to which he is assigned. Moreover, he does not have access to such information because he is not assigned a security code; and
4. Although he may be able to retrieve real property data on the computer, by following established procedures such data has been compiled and classified in a publication developed by the realtors' association and, therefore, there is no advantage to retrieval of such information from the computer.

CAVEAT: Even though there is no conflict of interest by the retention of his license, there still remains an appearance of a conflict of interest because the public may perceive that he enjoys an advantage over other realtors as an employee of a department whose employees have access to real property data relating to real property taxes. Therefore, the Commission recommends that the employee's activities concerning his license be judicious so that public confidence in public employees will not be jeopardized.

Dated: August 18, 1982

MAZEPPAK. COSTA
Chair, Ethics Commission